County of Los Angeles
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WILLIAM T FUJIOKA
Chief Executive Officer

"To Enrich Lives Through Effective And Caring Service"

July 29, 2014

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
13 July 29, 2014
Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADMINISTRATIVE CORRECTIONS TO THE SHORT-TERM AND LONG-TERM DISABILITY PLANS
ALL DISTRICTS
(3 VOTES)

SUBJECT

This letter and accompanying ordinance will make minor changes to existing pay provisions related to the Short-Term and Long-Term Disability (STD and LTD) Plans. It will also make technical changes and corrections to existing pay and benefit provisions.

IT IS RECOMMENDED THAT THE BOARD:

Approve changes to the Los Angeles County Code amending Title 5 – Personnel to clarify existing administrative plan provisions of the Short-Term and Long-Term Disability Plans, and to correct inadvertent errors and omissions to various pay and benefit provisions.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The minor changes and technical corrections provided for in the accompanying ordinance are explained more fully in the attachment. The changes are mainly related to the Short-Term and Long-Term Disability Plans for both represented and non-represented employees.

Short-Term and Long-Term Disability Plans

We are recommending changes to the County Code pertaining to the Short-Term and Long-Term Disability plans. The recommended County Code changes will clarify and support the existing administrative claims processing practice in the following areas: domestic partner certification, appeals processing, late filing penalties, income offsets from secondary jobs, and third-party liability.

The existing County Code language, regarding appeals processing, late filing penalties, income offsets from secondary jobs, and third-party liability, does not follow the actual administrative procedures currently in place by the Chief Executive Office (CEO) Risk Management and the STD/LTD Third-Party Administrator. Although the Cafeteria Benefit Plan Election Information and LTD Plan Information materials describe the actual administrative procedures, the recommended County Code changes will reinforce the existing administrative practices and clarify the actual provisions of the affected plans.

Implementation of Strategic Plan Goals

The recommended changes are consistent with the principles of the Countywide Strategic Plan by demonstrating fiscal integrity and financial responsibility.

FISCAL IMPACT/FINANCING

No additional funding is required for the administrative recommendations to the Short-Term and Long-Term Disability Plans.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The accompanying ordinance implementing amendments to Title 5 – Personnel of the County Code have been approved as to form by County Counsel.

The Coalition of County Unions (CCU) and Service Employees International Union (SEIU), Local 721 have both been informed of these changes. The CCU has expressed no opposition and Local 721 has approved the changes to the ordinance.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current services.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:BC:JA:MTK
WGL:LSB:mst

Enclosures

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
Human Resources
All Department Heads
Coalition of County Unions
SEIU, Local 721

ATTACHMENT

I. CHANGES AFFECTING ALL OF THE COUNTY'S CAFETERIA PLANS

A. ***What the current Code provision does:*** For purposes of the cafeteria benefit plans known as MegaFlex, Flexible Benefit Plan, Choices, and Options, the term "Domestic Partner" is defined to mean an individual who qualifies as a domestic partner within the meaning of Section 2.210 of the County Code.

What the proposed change does: Expands the existing definition to include anyone who qualifies as a domestic partner within the meaning of either Section 2.210 of the County Code or Section 298.5 of the California Family Code.

Affected Section(s) of the Code: 5.27.020, 5.28.020, 5.33.020, and 5.37.020

Comments: For domestic partner certifications, there are two forms available for County employees: the County's Statement of Domestic Partnership filed with the Registrar-Recorder/County Clerk's Office (County Code Chapter 2.210) and the State of California Declaration of Domestic Partnership (California Family Code Section 298.5). The State's certification process encompasses all of the eligibility requirements included in the County's certification process and is a more than adequate substitute. Therefore, employees who possess the State's certification, but not the County's certification, should also be allowed to cover domestic partners for health insurance purposes. This has been the County's actual practice with respect to the plans in question, and this change brings the County Code language into better alignment with that practice.

II. CHANGES AFFECTING THE MEGAFLEX SHORT-TERM DISABILITY (STD) PLAN

A. ***What the current Code provision does:*** Provides for the coordination of STD benefits with other income benefits an individual may receive or otherwise utilize for the same disability (e.g., workers' compensation benefits, state disability benefits, other insurance benefits from a third-party, etc.). Under this provision, STD benefits are reduced by the value of any such other benefits.

What the proposed change does: Excludes from "other income benefits" compensation received from a third-party liability policy (e.g., benefits for "pain and suffering" from a third-party auto insurance policy).

Affected Section(s) of the Code: 5.27.400 and 5.28.400

Comments: Imposing benefit reductions for third-party payments, such as payments for pain and suffering, is difficult to administer with a short-term benefit like STD, and arguably unfair. As a practical matter, STD claims involving third-party payments are extremely rare. The STD Plan serves as a managed alternative to the sick leave benefits provided to other County employees not covered by MegaFlex, and it operates at a substantially lower cost than the costs associated with sick leave benefits. The cost difference is due in large part to the claims management process inherent in the STD Plan and the fact that many STD Plan participants pay for part of the cost of their coverage through elective employee contributions. This change will add fairness to the program, simplify administration, and produce no measurable increase in County cost.

B. ***What the current Code provision does:*** Terminates STD benefits if a claimant receives any income from other "gainful employment," including self-employment.

What the proposed change does: Allows a claimant to receive income from an outside employment source, including self-employment, if the circumstances of the employment do not invalidate the legitimacy of the illness or injury giving rise to the STD benefits in question.

Affected Section(s) of the Code: 5.27.400 and 5.28.400

Comments: All STD Plan claimants will continue to be queried about outside employment in the normal course of the claims administration process. However, this change will provide the claims administrator the discretion to determine whether the nature of the physical and mental activities related to any outside employment should, or should not, be grounds to question the legitimacy of a disability claim. For example, an employee who has an arduous County job, and who must be absent from work due to a broken leg, may be fully capable of maintaining a previously established side business if the activities associated with that business are non-arduous in nature. This change will allow the exercise of judgment in these matters, and, in some cases, will prevent the infliction of an unnecessary hardship on STD claimants who are legitimately disabled under the terms of the STD Plan.

C. ***What the current Code provision does:*** Provides that claimant appeals of the denial, cessation, or cancellation of STD benefits must be submitted within time frames established in the explanatory information provided to MegaFlex participants (known as the "Election Information").

What the proposed change does: Provides that the CEO may waive the normal timeframes for appeals in any case where the CEO determines that the nature of a claimant's disability precluded the timely submission of an appeal.

Affected Section(s) of the Code: 5.27.410 and 5.28.410

Comments: This change would only apply in those relatively rare cases where a claimant is too sick or too injured to comply with the normal deadlines communicated to STD Plan participants through the Election Information.

III. CHANGES AFFECTING THE MEGAFLEX LONG-TERM DISABILITY (LTD) PLAN AND THE LTD PLAN APPLICABLE TO NON-REPRESENTED EMPLOYEES WHO ARE PARTICIPANTS IN THE FLEXIBLE BENEFIT PLAN AND TO OTHER ELIGIBLE REPRESENTED EMPLOYEES

A. ***What the current Code provision does:*** Provides a definition for LTD Health Survivor.

What the proposed change does: Updates the definition for LTD Health Survivor to reflect the change to age 26 under the Affordable Care Act.

Affected Section(s) of the Code: 5.27.220, 5.28.220, and 5.38.010

Comments: In 2010, the Affordable Care Act extended eligibility for health insurance coverage for employees' dependents to age 26. The law required that Health plans provide coverage to all eligible dependents under age 26, including those who are not enrolled in school, not dependents on their parent's tax returns, and those who are married. This has been the County's actual practice with respect to dependent coverage since the law was enacted in 2010, and this change brings the County Code language into alignment.

B. ***What the current Code provision does:*** Allows individuals who are receiving LTD survivor benefits to also receive health insurance benefits under the LTD Health Plan unless and until the individual is eligible to receive retiree health benefits from LACERA. If LACERA health insurance benefits become available, the LTD health insurance benefits must stop.

What the proposed change does: Clarifies that LTD survivor benefit recipients who are eligible for LACERA retiree health insurance benefit, but not eligible for a LACERA subsidy toward those benefits, may receive LTD health insurance benefits for a period of two years.

Affected Section(s) of the Code: 5.27.450, 5.28.450, and 5.38.020

Comments: Contributory retirement plan members who become LTD beneficiaries must make application for LACERA retirement benefits no later than two years from the commencement of LTD benefits. LTD disability benefits are then reduced by the retirement benefits received from LACERA and the responsibility for the provision of health insurance shifts completely to LACERA. For these individuals, this policy effectively limits the receipt of LTD health insurance benefits to two years.

Different rules apply to the survivors of employees in the contributory retirement plans who were LTD beneficiaries prior to death or who, at the time of death, were active employees covered by the LTD Plan. With one exception noted below, the responsibility to provide health insurance benefits to the survivors shifts immediately to LACERA. Each such survivor may elect LACERA coverage in the same manner living retirees elect that coverage, and may receive a LACERA provided subsidy toward that coverage if the decedent either died from a work related cause (i.e., a work connected death under the workers compensation law) or completed at least ten years of retirement service credit.

The one exception relates to the survivors of employees in the County's contributory retirement plans who die in active service due to non-work related reasons, and who, at the time of death, have at least five but less than ten years of retirement service credit. In these limited cases, the survivor is eligible for a survivor benefit allowance from LACERA, and LACERA retiree health insurance coverage, but not a subsidy toward that coverage (as a minimum of ten years of retirement service credit is necessary to receive a LACERA retiree health insurance subsidy). Current practice under the LTD Plan extends LTD health insurance coverage to these survivors for a period of two years. The proposed change in the County Code brings the language in the Code into better alignment with this practice.

C. ***What the current Code provision does:*** Provides for a COLA for LTD benefits based on movement in the Consumer Price Index (CPI).

What the proposed change does: Updates the name of the pertinent CPI to the "Los Angeles/Riverside/Orange County CPI."

Affected Section(s) of the Code: 5.27.460 and 5.28.460

Comments: This is a technical non-substantive change reflecting a CPI name change effectuated by the U.S. Bureau of Labor Statistics.

D. ***What the current provision does:*** Provides for the cessation of LTD benefits if a claimant engages in outside employment, unless the employment is part of a rehabilitation program approved by the CEO.

What the proposed change does: Deletes this provision in its entirety.

Affected Section(s) of the Code: 5.27.460 and 5.28.460

Comments: Not all permissible outside employment need be part of a rehabilitation program. This provision conflicts with the above provision that allows, under specified circumstances, outside employment on the condition that LTD benefits are reduced by 50% of the income from such employment. This current provision is, in effect, a defective provision that has never been enforced under the terms of the LTD Plans. The existing LTD claims administration process, which involves an independent medical exam by a County designated physician, includes a vetting of any outside employment activity to determine if the physical and mental activities related to the employment are in conflict with the LTD claim. Deleting this provision will have no impact on the operation or the costs of the LTD Plans.

E. ***What the current Code provision does:*** The non-MegaFlex LTD plan excludes eligibility for LTD benefits if the claimant has been absent from work for six months or more on a personal leave without prior approval prior to total disability.

What the proposed change does: Adds this exclusion to the MegaFlex LTD Plans.

Affected Section(s) of the Code: 5.27.460, 5.28.460

Comments: This exclusion was missing from the MegaFlex LTD Benefits section of the County Code but has been historical language found under Code Section 5.38.020 (D7). However, the two plans are administered by the Claims Administrator in the same way. This change brings the County Code language into better conformance with the current administrative rules of the plans.

F. ***What the current Code provision does:*** Establishes time limits on the filing of claims for LTD benefits, including an absolute limit of one year from the first day of absence from work.

What the proposed change does: Replaces the one year limit with a penalty equal to a day-for-day loss of benefits for every day a claim is submitted after the one year mark. However, the penalty may be waived by the CEO if he determines that the nature of a claimant's disability precluded the timely submission of the claim.

Affected Section(s) of the Code: 5.27.470, 5.28.470, and 5.38.030

Comments: This change would also apply in those relatively rare cases where a claimant is too sick or too injured to comply with the normal deadlines communicated to LTD Plan participants through the Plan Information.

G. ***What the current Code provision does:*** Establishes the right of an LTD claimant to appeal the denial or cessation of LTD benefits in accordance with procedures and time frames set out in the Election Information. The appeal shall be reviewed by the CEO, or his designee, and his decision shall be final.

What the proposed change does: Clarifies that the appeal shall first be reviewed by the Claims Administrator (as now defined as a County Department or an outside contractor designated by the CEO) and then, upon written request from the claimant, a hearing officer designated by the CEO. Provides that the normal time limits on this process set out in the Election Information may be waived by the CEO if the nature of a claimant's disability precluded a timely appeal.

Affected Section(s) of the Code: 5.27.470, 5.28.470, and 5.38.030

Comments: This change brings the County Code language into better conformance with the longstanding operation of the LTD Plans insofar as appeal processing is concerned, and allows the CEO the discretion to exercise judgment in enforcing processing deadlines where very debilitating injuries or illnesses are concerned.

H. ***What the current Code provision does:*** Defines various terms used in the non-MegaFlex LTD Plan.

What the proposed change does: With respect to the LTD Plan applicable to represented employees and non-represented employees not covered by MegaFlex, changes references to "CAO" to "CEO;" defines "Claims Administrator" to mean the County Department or outside contractor designated by the CEO; and adds a new definition for "Plan Information."

Affected Section(s) of the Code: *5.38.010*

Comments: The changes relating to the definitions of "CEO" and "Claims Administrator" are technical housekeeping changes that have no substantive impact on the operations of these plans. The new definition for "Plan Information" affirms the CEO's authority to promulgate various rules and employee information necessary for the general administration of the Plan. Such rules and information must be consistent with all Board approved negotiated labor agreements relating to the Plan. None of these changes poses any additional costs to the Plan or the County.

I. ***What the current Code provision does:*** Incorrectly provides that survivor benefits under the LTD Plan that apply to represented employees, and non-represented employees who are not participants in MegaFlex, may be paid to surviving domestic partners who are qualified under Section 2.210.020 of the County Code. Instead, the Code should provide that an eligible domestic partner must be qualified under Section 298.5 of the California Family Code.

What the proposed change does: Corrects this error by clarifying that LTD Plan survivors who are domestic partners must be qualified as such under Section 298.5 of the California Family Code.

Affected Section(s) of the Code: 5.38.040

Comments: As previously noted, the criteria for domestic partner certification under Section 298.5 of the California Family Code encompasses all of the requirements imposed by the County under Section 2.210.020 of the County Code. However, the County's requirements do not result in the same civil liabilities and other legal ramifications inherent in the State certification process. In this connection, the definition of "survivor" under the LTD Plan is different from the definition used by the County for group health and dental insurance purposes as it is specifically intended to parallel the definition used under the state law governing County retirement benefits (the County Employees Retirement Law of 1937). That law requires that domestic partners be qualified under Section 298.5 of the California Family Code. The LTD Plan standard is specifically referenced in the existing fringe benefit agreements with the CCU and SEIU which set out the intent of the parties and the Board. This change corrects a technical defect in the County Code and brings the Code into conformance with the Board approved negotiated fringe benefit MOUs.